

**REMARKS**

This amendment is filed together with a petition for extension of time (three months) which extends the period for response up to and including November 2, 2009, given that November 1, 2009 falls on a Sunday.

The specification is amended herein as shown in the attached substitute specification which is provided in both markup and clean copy forms. Applicants have attempted, insofar as appropriate, to amend the application according to the format recommended by the examiner. No new matter is incorporated in the application by the present amendments.

Claims 1-42 and 44 through 104 and 106-107 are pending in the application with the present amendments, including new claims 106 and 107. Claim 105 is canceled herein, rendering the 35 U.S.C. § 112 rejection thereof moot. The indication that claims 65-104 are allowed is appreciated. The allowability of claims 53-63, if amended to incorporate the subject matter of the claims from which they depend, is also appreciated. Claim 64 was objected to as being a multiple dependent claim which depends from another multiple dependent claim. As amended herein, the claims overcome the objections and rejections thereto in the office action.

**I. Statutory Double-Patenting Rejections**

Many of the presently pending claims are amended herein. It is respectfully submitted that rejections of claims 1-52 under 35 U.S.C. § 101 are moot in view of the present amendments to the claims. Claims 1-52 as amended herein do not claim identical subject matter to the claims of U.S. Patent 6,887,503 and, therefore, cannot be rejected on this basis. As stated in M.P.E.P. § 804,

A reliable test for double patenting under **35 U.S.C. 101** is whether a claim in the application could be literally infringed without literally infringing a

corresponding claim in the patent. *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970). Is there an embodiment of the invention that falls within the scope of one claim, but not the other? If there is such an embodiment, then identical subject matter is not defined by both claims and statutory double patenting would not exist. (*Emphasis in original*)

MPEP 804 II.A. The M.P.E.P. refers to an example, in which the invention is

defined by a claim reciting a compound having a "halogen" substituent is not identical to or substantively the same as a claim reciting the same compound except having a "chlorine" substituent in place of the halogen because "halogen" is broader than "chlorine." (*Emphasis added*).

(*Id.*)

In this case, claims 1, 41 and 44 are each independent claims, from which all others of claims 1-52 depend. Therefore, if the scope of any of claims 1, 41, and 44 differs from the scope of the closest corresponding claim of the '503 Patent, then there can be no double-patenting rejection under 35 U.S.C. § 101. In this case, the scope of the claims is different. Accordingly, amended claims 1-52 cannot be rejected for statutory double-patenting.

Specifically, claim 1 recites that "the or each B component is a solid which may be a viscoelastic solid." By contrast, claim 1 of the '503 Patent recited "wherein said B component is a solid (including a viscoelestic solid)." The claim scope varies since present claim 1 recites "may be" while claim 1 of the '503 recites that the solid includes "a viscoelastic solid". Therefore, present claim 1 has a different scope. The same is true of claim 41, to which the same amendments have been made. Moreover, present claim 44 is even more different from the corresponding claim of the '503 Patent because it is amended to an even greater extent to recite "a cell-like extruded" food product, and in which specific features

are now recited in the claim: an extrudable component "which exhibits a general plastic rheology during extrusion", and "each row has a generally continuous boundary cell walls of B' component whereby each segment of A' is a cell surrounded on its z and x directed faces by B'", etc.

Moreover, besides claims 1, 41, and 44, many other claims are amended herein, many of which change the dependency of the claims. For the above reasons, it is respectfully submitted that the claims are no longer subject to rejection for statutory double-patenting.

### **II. Objections Based on Rejection of Antecedent Claims**

It is respectfully submitted that claims 53-63, which depend from one or more of claims 1-52, are made allowable by the present amendments because claims 1-52 are made allowable herein.

### **III. Objections For Multiple-Dependent Claims**

In the office action, the examiner objected to claim 64 as being in form of a multiple-dependent claim which depends from another multiple-dependent claim.

The present amendment amends claim 64 to depend from a single claim 44. In addition, the present amendment amends each claim to which the same objection could be made. The application now contains no multiple dependent claim which depends from any other multiple dependent claim.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited. If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that she telephone Applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

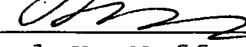
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If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: November 2, 2009

Respectfully submitted,

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